

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LATEX GLOVES PRODUCTS : MDL DOCKET NO. 1148
LIABILITY LITIGATION :
: ALL CASES

CASE MANAGEMENT ORDER NO. 42
RE: DISMISSAL OF NAMED DEFENDANTS THAT ARE
NOT PROPER PARTIES TO THE LITIGATION

AND NOW, this 9th day of December, 1998, upon conference and agreement of the parties, the following is ORDERED:

The purpose of this Case Management Order is to provide a mandatory procedure for the prompt dismissal of named defendants that either: (1) are not legal entities capable of being sued; or (2) have not manufactured, designed, sold or distributed natural rubber latex gloves for sale, distribution or use in the United States since 1978. This Case Management Order is not intended to replace procedures already in place for dismissal of defendants as to which there is no product identification (i.e. "bright line dismissal"), nor is it intended to address requests for dismissal on the merits (e.g., failure of causation) or any other basis not encompassed by the two grounds for dismissal as set forth above. Additionally, this Case Management Order is not intended to replace the procedures set forth in Case Management Orders numbered 30, 37, 39 ¶ 1, and 40 ¶ 1.

1. Within 30 days of the entry of this Order, dismissal of parties named as defendants ("Named Defendants") that are not proper parties to this litigation, as set forth above, shall be sought in accordance with the terms of this Case Management Order.

Dismissal may be sought by the Named Defendant itself, or by any party which has been properly served and appeared in at least one action which is a part of these MDL proceedings. The Named Defendant seeking dismissal, or the party requesting dismissal of a Named Defendant, shall provide to the MDL Plaintiffs' Lead Counsel and counsel for plaintiffs in each case identified in subparagraph 1(a), a written statement ("Written Statement") that:

(a) the case names, docket numbers and identities of plaintiffs' counsel of all pending actions that are part of these MDL proceedings in which the Named Defendant has been named;

(b) a clear and concise explanation of the reason(s) why such Named Defendant is not a proper party to the litigation (such as, for example, that the Named Defendant is improperly named because it has not manufactured, distributed or sold natural rubber latex medical gloves for sale, distribution or use in the United States since 1978 – i.e. did not have product to distribute –, or that the Named Defendant is not a legal entity capable of being sued); and

(c) that the Named Defendant, or the party requesting dismissal of the Named Defendant, has provided full and complete responses to the Corporate Identification Information form set forth in Case Management Order No. 41, and answered fully and completely Interrogatories numbered 1, 3, 4 (a), (b) and (c), and 27 of Merits Interrogatories of Plaintiffs Addressed to All Defendants - First Set.

2. Within 21 days after submission of a Written Statement

pursuant to paragraph 1 hereof, Plaintiffs' Lead Counsel or his designee and that Named Defendant's counsel or counsel for the party requesting dismissal of the Named Defendant shall meet and confer as to whether such Named Defendant should be dismissed from these proceedings.

3. If counsel agree that a Named Defendant should be dismissed from these proceedings, an appropriate consent order shall be prepared and submitted to the Court. If counsel agree that dismissal of the Named Defendant is not appropriate, further action need not be taken.

4. If counsel do not agree on whether a dismissal is appropriate, the following procedure shall apply:

(a) either party may submit the issue to the Special Master no later than 14 days after the parties confer pursuant to paragraph 2 hereof;

(b) the Special Master shall promptly conduct a hearing on the issue of dismissal of the Named Defendant and shall deliver a written advisory opinion to the parties no later than seven days after the hearing;

(c) promptly after receipt of the advisory opinion, Plaintiff's Lead Counsel or his designee and the Named Defendant's counsel or counsel for the party requesting dismissal of the Named Defendant shall meet and confer on the issue;

(d) after issuance of the Special Master's advisory opinion, if counsel agree that the Named Defendant should be dismissed from these proceedings, an appropriate consent order

shall be prepared and submitted to the Court. If counsel agree that the dismissal of the Named Defendant is not appropriate, further action need not be taken; and

(e) within 10 days after receiving the Special Master's advisory opinion, either party may object to it by causing a single, joint submission of the issues to be delivered to the Court for a ruling. The submission shall set forth the positions of the parties to the dispute – first, the Named Defendant and then Plaintiff, together with any short reply and counter-reply. The submission shall be signed by all pertinent counsel and shall contain their certification that they have exerted every reasonable effort to resolve the dispute.

5. If for a period of one year following dismissal or ninety (90) days after the completion of merits discovery, whichever occurs later, evidence is established that the dismissed defendant either: (1) was a legal entity capable of being used, or (2) manufactured, designed, sold or distributed natural rubber latex gloves for sale, distribution or use in the United States since 1978, the dismissed defendant will agree voluntarily to return to the record by stipulation without asserting the statute of limitations as a defense assuming that the initial filing was timely.

6. For each subsequently filed action which becomes part of these MDL proceedings and in which a Named Defendant which has been dismissed from these proceedings pursuant to this Case Management Order is named as a party, counsel for Plaintiff in that action

shall be advised by the Named Defendant or the party which previously sought the dismissal of the Named Defendant that the Named Defendant has been previously determined not to be a proper party to these proceedings. Counsel for Plaintiff in such subsequently filed action may challenge the applicability of the previous determination regarding the Named Defendant only upon a showing of good cause.

7. Whenever a defendant is hereafter properly served for the first time with process and appears in any action which is or becomes part of these MDL proceedings, it shall thereafter be served timely with a copy of this Case Management Order by MDL Plaintiffs' Liaison Counsel and shall have sixty (60) days after receipt of same to serve a written statement in accordance with paragraph 1 of this Case Management Order.

8. Nothing herein shall be interpreted as precluding any Named Defendant from filing a formal motion for dismissal based upon grounds outside of the scope of this Case Management Order.

9. Any agreements resulting from any subsequent negotiations between MDL Plaintiffs' Lead Counsel or his designee and counsel for a Named Defendant with respect to dismissal of a Named Defendant in accordance with this Case Management Order shall be in the form of a Stipulation.

BY THE COURT:

Edmund V. Ludwig, J.